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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,389	11/08/2001	Matthew Becker	SMQ-143/P6594	4465
959	7590	03/07/2006	EXAMINER	
LAHIVE & COCKFIELD 28 STATE STREET BOSTON, MA 02109			MEONSKE, TONIA L	
			ART UNIT	PAPER NUMBER
			2181	

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/010,389	Applicant(s) BECKER ET AL.	
	Examiner Tonia L. Meonske	Art Unit 2181	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-24 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Panwar et al., US Patent 6,098,165 (herein referred to as Panwar).
3. The rejections are respectfully maintained and incorporated by reference as set forth in the last office action, mailed on September 12, 2005.

Response to Arguments

4. On pages 7 and 8, Applicant argues with respect to claim 1, and similarly with respect to claim 2 in essence:

“The Examiner appears to suggest that because the system of Panwar is clocked, Panwar discloses edge detecting valid instructions. This is not the case. Determining a clock cycle (which may be performed using edge detection) is not the same as determining the number of valid instructions.”

However, in claim 1, and similarly in claim 2, Applicant does not claim “determining the number of valid instructions”. The preamble claims a method FOR calculating the number of valid instructions. The body of the claim never actually calculates the number of valid instructions. The claim merely edge detects valid instructions. No calculation is actually performed. Therefore the claimed calculating in the preamble is merely an intended use and is not accorded patentable weight. Therefore this argument is moot.

5. On page 9, Applicant argues with respect to claim 8 in essence:

“As with claims 1 and 2, the Examiner appears to suggest that because the system of Panwar is clocked, Panwar discloses edge detecting valid instructions. Again, this is not the case. Determining a clock cycle (which may be performed using edge detection) is not the same as determining the number of valid instructions. While the system of Panwar may be clocked, edge detection is not disclosed or even suggested as a method determining the number of valid instructions.”

However, in claim 8 Applicant has not actually claimed *determining* the number of valid instructions. Applicant has instead claimed “edge detecting the number of valid instructions occurring after the complex instruction”. Edge detecting in the claims is a very broad term. Examiner is permitted to use the broadest reasonable interpretation of the claim. In this case, edge detecting is interpreted by Examiner to be detecting instructions on the edge of a clock, either the positive edge or the negative edge.

Whether the system is positive edge triggered, negative edge triggered, or edge triggered where the system is triggered by both positive and negative edges, is irrelevant. Having the system being clocked in some fashion means that instructions are edge detected, i.e. instructions are detected on the edge of a clock. In the case of Panwar, the system is clocked (column 4, line 65-column 5, line 1). In Panwar a number of valid instructions are edge detected each cycle and issued. Therefore, Panwar has in fact taught edge detecting the number of valid instructions, as claimed (column 4, line 65-column 5, line 1). If Applicant would like a specific special meaning of edge detecting read into the claims, then Applicant should specifically claim that meaning. Therefore this argument is moot.

6. On page 10, Applicant argues with respect to claim 17 in essence:

“As with claims 1, 2, and 8, the Examiner appears to suggest that because the system of Panwar is clocked, Panwar discloses edge detecting valid instructions. Again, this is not the case. Determining a clock cycle (which may be performed using edge detection) is

Art Unit: 2181

not the same as determining the number of valid instructions. While the system of Panwar may be clocked, edge detection is not disclosed or even suggested as a method determining the number of valid instructions."

However, in claim 17 Applicant has not claimed "determining the number of valid instructions". Therefore this argument is moot.

7. On page 10, Applicant argues with respect to claim 17 in essence:

"There is no discussion whatsoever of a method for calculating the number of valid instructions within the microprocessor."

However, in claim 17 Applicant has not claimed "*calculating the number of valid instructions within the microprocessor*". Therefore this argument is moot.

8. On page 11, Applicant argues with respect to claim 18 in essence:

"Nowhere in Panwar is there a disclosure of an edge detection element for detecting valid instructions within the bundle. Determining a clock cycle (which may be performed using edge detection) is not the same as determining the number of valid instructions."

However, as an initial matter, in claim 18 Applicant has not claimed "detecting valid instructions within the bundle". Furthermore, in claim 18 Applicant has not claimed "determining the number of valid instructions". Therefore this argument is moot.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

10. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

Art Unit: 2181

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tonia L. Meonske whose telephone number is (571) 272-4170.

The examiner can normally be reached on Monday-Friday, with every other Friday off.

12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Huynh can be reached on (571) 272-4147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tlm


HENRY W. H. TSAI
PRIMARY EXAMINER

3/3/06